

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

ROSE BUI

Plaintiff

VS.

**FLOOR AND DECOR OUTLETS
OF AMERICA, INC. d/b/a FLOOR
AND DECOR AND JOHN DOE**

Defendants

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CIVIL ACTION NO. 4:22-cv-01348

NOTICE OF REMOVAL

Defendant Floor and Decor Outlets of America, Inc. (“Floor and Decor”) herein files its Notice of Removal of this civil action to the United States District Court for the Southern District of Texas, Houston Division, and would respectfully show as follows:

**I.
PENDING STATE COURT SUIT**

1. On April 7, 2022, Plaintiff Rose Bui (“Plaintiff”) filed a civil action naming Floor and Decor Outlets of America, Inc. as defendant in Cause Number 2022-DCV-292556, entitled “*Hector Melendez-Solis v. Floor and Decor Outlets of America, Inc.*” in the 240th District Court in Fort Bend County, Texas. In Plaintiff’s

Original Petition (“Petition”), Plaintiff alleged causes of action sounding in negligence against Floor and Decor for alleged personal injury claims of Plaintiff sustained while on Defendant’s premises.

2. Plaintiff’s Petition states, “Pursuant to Texas Rule of Civil Procedure 47(c), Plaintiff seeks monetary relief of less than \$75,000.00, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and judgment for all other relief to which Plaintiff is justly entitled.” (Ex. A-1)

3. The name and address of the court from which the case is being removed is:

240th District Court of Fort Bend County, Texas

301 Jackson Street

Richmond, Texas 77469

4. The following documents are indexed and attached to this Notice of Removal:

Exhibit A-1 – Plaintiff’s Original Petition

Exhibit A-2 – Service Information on Defendant

Exhibit B – List of Counsel of Record including address, telephone and facsimile number, and the parties they represent

Exhibit C – Correspondence from Plaintiff’s counsel identifying medical damages

5. Presently, there has been no action taken by the state court in its proceeding.

II. TIMING OF REMOVAL

6. Floor and Decor was served with the Petition and Summons on April 14, 2022, through Floor and Decor's agent for service of process. Floor and Decor was served with correspondence from Jason Hoelscher, counsel for Plaintiff, on October 20, 2021 detailing Plaintiff's medical expenses related to her claims. (Ex. C). Thus, in light of the pre-suit correspondence from Plaintiff's counsel, this Notice of Removal is timely in accordance with 28 U.S.C. § 1446(b)(3) because this Notice of Removal is filed within thirty (30) days of Defendant's receipt, through service or otherwise, of a copy of Plaintiff's Original Petition – the first filing containing claims that are removable.

III. REMOVAL JURISDICTION

7. This case is removable to this Court pursuant to 28 U.S.C. § 1332(a)(1) as being a civil action brought in state court, but over which this federal district court has original jurisdiction.

8. Pursuant to 28 U.S.C § 1332(a)(1), this federal district court “shall have original jurisdiction of all civil actions where the matter in controversy exceeds the

sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different States.”

9. Plaintiff is a resident of the State of Texas. Floor and Decor is a foreign for-profit corporation incorporated in the State of Delaware with its principal place of business in the State of Georgia. Therefore, there is complete diversity between the parties to the suit.

10. To the extent Plaintiff has included a “John Doe” as Defendant, that Defendant is not identified and therefore cannot be determined to defeat diversity.

11. On October 20, 2021, in a letter to Bob Capecci, Defendant’s claims adjuster, Jason Hoelscher of Sico Hoelscher Harris identified his firm along with The Huynh Law Firm, Plaintiff’s current named counsel in the state court action, as counsel for Plaintiff (Ex. C). Mr. Hoelscher identified Plaintiff’s medical expenses to date as \$188,896.32. Therefore, the amount in controversy in this matter far exceeds the sum or value of \$75,000, exclusive of interest and costs that Plaintiff has claimed in the state court action.

IV. **VENUE**

12. Under 28 U.S.C § 1446(a), venue for a removed action is proper in this Court as the 240th District Court of Fort Bend County, Texas, where the state action is pending, is located within this district and division.

V.
ANSWER

13. Floor and Decor has not yet filed an Answer to Plaintiff's Original Petition in the state action

VI.
NOTICE TO ADVERSE PARTIES AND TO STATE COURT

14. As the removing party, Floor and Decor will give Plaintiff prompt written notice of this Notice of Removal as required by 28 U.S.C. § 1446(d).

15. Floor and Decor will file a copy of this Notice of Removal with the Clerk of Court for the 240th District Court, Fort Bend County, Texas, where the state court action is currently pending, as required by 28 U.S.C. § 1446(d), and will serve these pleadings on counsel for Plaintiff.

Wherefore, Floor and Decor Outlets of America, Inc. respectfully requests that this Notice of Removal be accepted as good and sufficient and that the above-described action be removed from the 240th District Court of Fort Bend County, Texas, to the United States District Court for the Southern District of Texas, Houston Division for trial and determination as provided by law; that this Court enter such orders and issue such process as may be necessary and proper to bring before it copies of all records and proceedings presently pending in the aforesaid state court suit, and thereupon proceed with this civil action as if originally commenced in this

Court; and that this Court enter all necessary and appropriate orders and decrees in accordance with applicable law.

Houston, Texas this 27th day of April, 2022.

Respectfully submitted,
ANDERSON BURNSIDE PLLC

/s/ Blair H. Burnside

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